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Attorneys for Defendants,  
MM&N, INC., a Delaware Corporation,  
dba REDWOOD CAFE; TAUBA WEISS,  
Trustee of the TAUBA WEISS TRUST

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

DAREN HEATHERLY; and IRMA RAMIREZ,

### **Plaintiffs,**

V.

REDWOOD CAFÉ; TAUBA WEISS,  
Trustee of the TAUBA WEISS TRUST;  
and MM&N, INC., a Delaware  
Corporation dba REDWOOD CAFÉ.

### Defendants.

No.: 3:14-cv-02953-LB

**[PROPOSED] CONSENT  
DECREE AND ORDER FOR  
INJUNCTIVE RELIEF**

1. **Summary of Plaintiffs' Allegations.** Plaintiffs Irma Ramirez and Daren Heatherly (“Plaintiffs”) filed this action against Defendants Redwood Café, Tauba Weiss, Trustee of the Tauba Weiss Trust and MM&N, Inc. (hereinafter, at times, “Defendants”) to enforce provisions of Title III of the Americans With Disabilities Act of 1990, 42 U.S.C. 12101 et seq., California Government Code Section 4450-4456, California Health and Safety Code Section 19955 et seq., California Civil Code Sections 51, 54 and 54.1 and California Code of Regulations, Title 24. Plaintiffs allege that they are physically disabled persons within the meaning of both State and Federal civil rights laws and statutes and allege that they

1 are required to use a wheelchair for mobility. Plaintiffs allege that this case  
2 involves the denial of parking, path of travel, entrance facilities, counters, dining  
3 tables, access to public restrooms and other facilities to Plaintiff and other disabled  
4 persons at the Redwood Café Subject Property, 8240 Old Redwood Highway,  
5 Cotati, California (hereafter the “Subject Property”). Plaintiffs allege that they  
6 were denied their rights to full and equal access at the Subject Property and were  
7 denied civil rights under both California law and Federal law. Plaintiffs allege that  
8 they were denied their rights to full and equal access to the Subject Property  
9 because it allegedly was not, and is not now, properly accessible to physically  
10 disabled persons, such as Plaintiffs, who use wheelchairs. Plaintiffs seek injunctive  
11 relief to require Defendants to make the Subject Property accessible to disabled  
12 persons and to ensure that any disabled person who attempts to use the Subject  
13 Property will be provided accessible entry and proper accessible facilities.  
14 Plaintiffs also seek recovery of damages for their alleged personal/physical injuries  
15 and discriminatory experiences as a result of Defendants’ failure and refusal to  
16 provide accessible facilities, and seek recovery of reasonable attorneys’ fees,  
17 litigation expenses and costs, according to statute.

18       2. **Defendants’ Denials and No Admission of Liability.** Defendants  
19 deny Plaintiffs’ allegations and, by entering into this Consent Decree and Order, in  
20 no way admit to any liability, whatsoever. In this regard, the parties enter into this  
21 Consent Decree and Order to amicably resolve certain aspects of the lawsuit  
22 without the need for further protracted litigation and to resolve certain allegations  
23 raised in the Complaint on file herein. The parties agree that resolution of these  
24 matters without further litigation is in the public interest and that entry of this Order  
25 is an appropriate means of resolving these matters. Accordingly, they agree to the  
26 entry of this Order with respect to the matters covered herein without trial or further  
27 adjudication of any issues of fact or law.

28       ///

1           3.     **Jurisdiction and Venue.** Plaintiffs alleges that this Court has  
2 jurisdiction over the public accommodations named in this action pursuant to 28  
3 USC 1331 for alleged violations of the Americans With Disabilities Act of 1990, 42  
4 USC 12101 et seq. Pursuant to pendant jurisdiction, Plaintiffs have also alleged  
5 attendant and related causes of action, arising from the same facts, seeking relief  
6 under California law, including, but not limited to, violations of California  
7 Government Code Section 4450 et seq., Health and Safety Code Sections 19955 et  
8 seq., including 19959, California Code of Regulations, Title 24, and California  
9 Civil Code Sections 51, 54 and 54.1.

10           Under the doctrine of supplemental jurisdiction, Plaintiffs allege that this  
11 Court has jurisdiction over Plaintiffs' claims arising under California state law.  
12 Assuming this Court has jurisdiction over the instant matter, venue is proper in the  
13 Northern District of California, the judicial district in which the claims have arisen,  
14 pursuant to 28 U.S.C. section 1391(b).

15           WHEREFORE, the parties hereby agree and stipulate to the Court's entry of  
16 this Consent Order which provides as follows:

17           4.     **Settlement of Injunctive Relief Aspects of Ongoing Litigation.**  
18 This Consent Decree and Order shall be a full, complete and final disposition and  
19 settlement of all of Plaintiffs' claims with respect to injunctive relief that have  
20 arisen out of the Complaint.

21           5.     **Injunctive Relief.** Defendants agree and stipulate to perform the tasks  
22 and injunctive relief work set forth in Exhibit A hereto, which exhibit is  
23 incorporated by reference herein as if set forth in full, in accord with the standards  
24 and specifications of The Americans with Disabilities Act Accessibility Guidelines  
25 ("ADAAG") and Title 24-2 of the California Code of Regulations, by no later than  
26 August 31, 2016.

27           6.     **Notice, Reporting and Monitoring Requirements.** Within five (5)  
28 days of the completion of the tasks and work set forth in this Consent Decree and

1 Order, including its exhibits, Defendants shall provide Plaintiffs' attorney with  
2 written notice that Defendants have fully completed such task and work.

3       **7. Mutual Release and Waiver of Civil Code Section 1542.** Except for  
4 all obligations required in this Consent Decree and Order and its exhibits, Plaintiffs  
5 on the one hand, on behalf of their respective agents, representatives, predecessors,  
6 successors, heirs, partners and assigns, and Defendants, on the other hand, on behalf  
7 of their respective agents, representatives, predecessors, successors, heirs, partners  
8 and assigns, release and forever discharge each other and each party's officers,  
9 directors, shareholders, managing members, members, subsidiaries, joint venturers,  
10 stockholders, partners, parent companies, employees, agents, attorneys, insurance  
11 carriers, heirs, predecessors, and representatives of each other party, from all  
12 claims, demands, damages, actions and causes of action of whatever kind or nature,  
13 presently known or unknown, with respect to the injunctive relief aspects of the  
14 lawsuit.

15       Each of the parties to this Consent Decree understands and agrees that there  
16 is a risk and possibility that, subsequent to the execution of this Consent Decree,  
17 any or all of them will incur, suffer or experience some further loss or damage with  
18 respect to the injunctive relief aspects of the lawsuit which are unknown or  
19 unanticipated at the time this Consent Decree is signed. Except for all obligations  
20 required in this Consent Decree, the parties intend that this Consent Decree apply to  
21 all such further loss with respect to the injunctive relief aspects of the lawsuit,  
22 except those caused by the parties subsequent to the execution of this Consent  
23 Decree. Therefore, except for all obligations required in this Consent Decree, this  
24 Consent Decree shall apply to and cover any and all claims, demands, actions and  
25 causes of action by the parties to this Consent Decree with respect to the injunctive  
26 relief aspects of the lawsuit, whether the same are known, unknown or hereafter  
27 discovered or ascertained, and the provisions of Section 1542 of the California  
28 Civil Code are hereby expressly waived. Section 1542 provides as follows:

1           A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS  
2           WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT  
3           TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING  
4           THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE  
5           MATERIALLY AFFECTED HIS SETTLEMENT WITH THE  
6           DEBTOR.

7           8.     **Entire Consent Decree and Order.** This Consent Decree and Order  
8           and its exhibits constitute the entire agreement on the matters raised herein, and no  
9           other statement, promise or agreement, either written or oral, made by any of the  
10          parties or agents of any of the parties, that is not contained in this written Consent  
11          Decree and Order and exhibits, shall be enforceable regarding the matters raised  
12          herein.

13           9.     **Public Document.** This Consent Decree and Order is a public  
14          document. A copy of this document, and any information contained herein, may  
15          be made available to any person.

16           10.    **Consent Decree and Order Binding On Parties.** This Consent  
17          Decree and Order shall be binding on Plaintiffs and Defendants in this action and  
18          any successor in interest to Plaintiffs and Defendants. Each party shall notify each  
19          such successor in interest of the existence and terms of this Consent Decree and  
20          Order.

21           11.    **Court Retention of Jurisdiction and Term of the Consent Decree**  
22          **and Order.** This Consent Decree and Order shall be in full force and effect, and  
23          this Court shall retain jurisdiction of this action to enforce the provisions thereof  
24          until July 15, 2017, or until the parties agree in writing that Defendants have  
25          fulfilled all of their obligations under the Consent Decree and Order, or until such  
26          time as the property ceases to be used as a public accommodation, whichever  
27          period is shorter.

28           12.    **Severability.** If any term of this Consent Decree and Order is  
29          determined by any Court to be unenforceable, the remaining terms of this Consent  
30          Decree and Order shall nonetheless remain in full force and effect.

**13. Damages and Attorney's Fees, Litigation Expenses, and Costs Not a Part of This Consent Decree and Order.** The damages and attorney's fees, litigation expenses and cost aspects of this lawsuit are not a part of the Consent Decree and Order and are the subject of a separate agreement between the parties to this Consent Decree.

**14. Reservation of Rights.** Notwithstanding anything to the contrary in the foregoing, each of the parties hereto reserves any and all of the rights which such party otherwise has, and which has not been specifically released or waived.

**15. Counterparts and Facsimile Signatures.** This Consent Decree and Order may be signed in counterparts by the parties and shall be valid and binding on each party as if fully executed all on one copy, and facsimile transmitted signatures shall be as valid and binding as originals.

16. **Signatories Bind Parties.** Each signatory on behalf of each party represents that he, she or it is authorized to bind each such party to this Consent Decree and Order.

Date: March 31, 2015 MM&N, INC., dba REDWOOD CAFÉ

By: /s/ Michael McCullaugh  
Michael McCullaugh

Date: March 31, 2015 TAUBA WEISS, TRUSTEE OF THE  
TAUBA WEISS TRUST

By: /s/ Tauba Weiss  
Tauba Weiss

**APPROVED AS TO FORM BY COUNSEL:**

By: /s/ Thomas E. Frankovich  
Thomas E. Frankovich, Esq.  
Attorneys for Plaintiffs

1 Date: March 31, 2015

2  
3 ABBEY, WEITZENBERG, WARREN &  
4 EMERY, P.C.  
5  
6

7 By: /s/ Mitchell B. Greenberg  
8 Mitchell B. Greenberg, Esq.  
9 Attorneys for Defendants,  
10 MM&N, INC. DBA REDWOOD CAFÉ,  
11 AND TAUBA WEISS, TRUSTEE OF  
12 THE TAUBA WEISS TRUST  
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Telephone: (707) 542-5050 Facsimile (707) 542-2589

## ATTESTATION

I hereby attest that I have on file all holographic signatures corresponding to any signatures indicated by a conformed signature (/S/) within this e-filed document.

Dated: March 31, 2015

# ABBEY, WEITZENBERG, WARREN & EMERY

By: /s/ Mitchell B. Greenberg  
Mitchell B. Greenberg,  
Attorneys for Defendants  
MM&N, INC. DBA REDWOOD CAFÉ,  
AND TAUBA WEISS, TRUSTEE OF THE  
TAUBA WEISS TRUST

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1 Pursuant to stipulation, and for good cause shown, **IT IS SO ORDERED.**  
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3 Date: April 2, 2015

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The Honorable Magistrate Judge Laurel  
Beeler



**EXHIBIT "A"**

Without conceding that any of the alleged violations cited therein constitute violations of state or federal law, Defendants MM&N, Inc., dba Redwood Café, and Tauba Weiss, Trustee of the Tauba Weiss Trust hereby agree to perform all of the remediation construction work identified in the architect's approved plans, dated September 4, 2014, attached hereto as Exhibit 1.

Date: March 31, 2015

# ABBEY, WEITZENBERG, WARREN & EMERY

By: /s/ Mitchell B. Greenberg

Mitchell B. Greenberg

## **Attorneys for Defendants**

## **MM&N, INC., DBA REDWOOD**

## CAFÉ, AND TÁUBA WEISS,

TRUST

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## **EXHIBIT 1**

# Redwood Cafe Access Upgrade

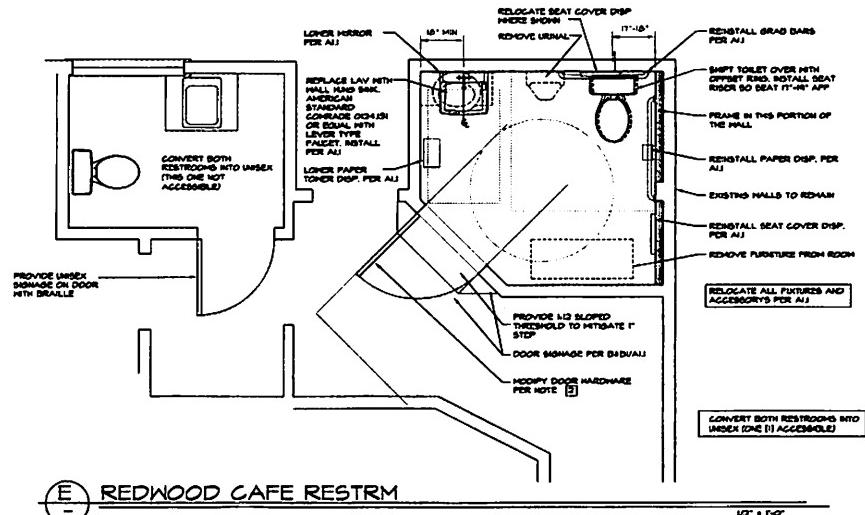
**APPLICABLE CODES**

ALL WORK IS TO CONFORM TO THE FOLLOWING CODES:  
 2010 CALIFORNIA BUILDING CODE (CBC)  
 2010 CALIFORNIA PLUMBING, ELECTRICAL, AND MECHANICAL CODES / CGC  
 CGC, CACI

**INDEX**

AUD ALU TITLE SHEET / SITE / FLOOR PLAN ACCESS REQUIREMENTS

- 1 ACCESSIBLE TABLES SHALL NOT PREVENT A WHEELCHAIR FROM ACCESSING THE TABLE. THEY SHALL HAVE A MAX WIDTH OF 36" AND MINIMUM CLEARANCE OF 31". MAXIMUM HT OF 34" AND A MIN DEPTH OF 17" UNDER THE TABLE. A LARGE ROUND BASE IS NOT ALLOWED FOR A PEDESTAL STYLE. THE TABLE SHALL HAVE EITHER A CROSS (X) BASE OR END LEGS. PROVIDE PLAQUE ON TABLE WITH ACCESSIBILITY SYMBOL.
- 2 REPLACE EXISTING DOOR HANDLES WITH ACCESSIBLE LEVER WITH PUSH BUTTON LOCKDOWN MECHANISM AND ADJUST OR REPLACE CLOSER SUCH THAT FORCE TO OPEN DOOR DOES NOT EXCEED 5 POUNDS.



E - REDWOOD CAFE RESTRM



1. WHITE ON BLUE BACKGROUND  
2. MOUNTED 40" MINIMUM ABOVE GROUND SURFACE

1. WHITE ON BLUE BACKGROUND  
2. MOUNTED 40" MINIMUM ABOVE GROUND SURFACE

B - ACCESS SIGN

1'0" x 1'0"

A - ACCESS SIGN

1'0" x 1'0"

SITE PLAN

1'0" x 1'0"

REVISIONS BY

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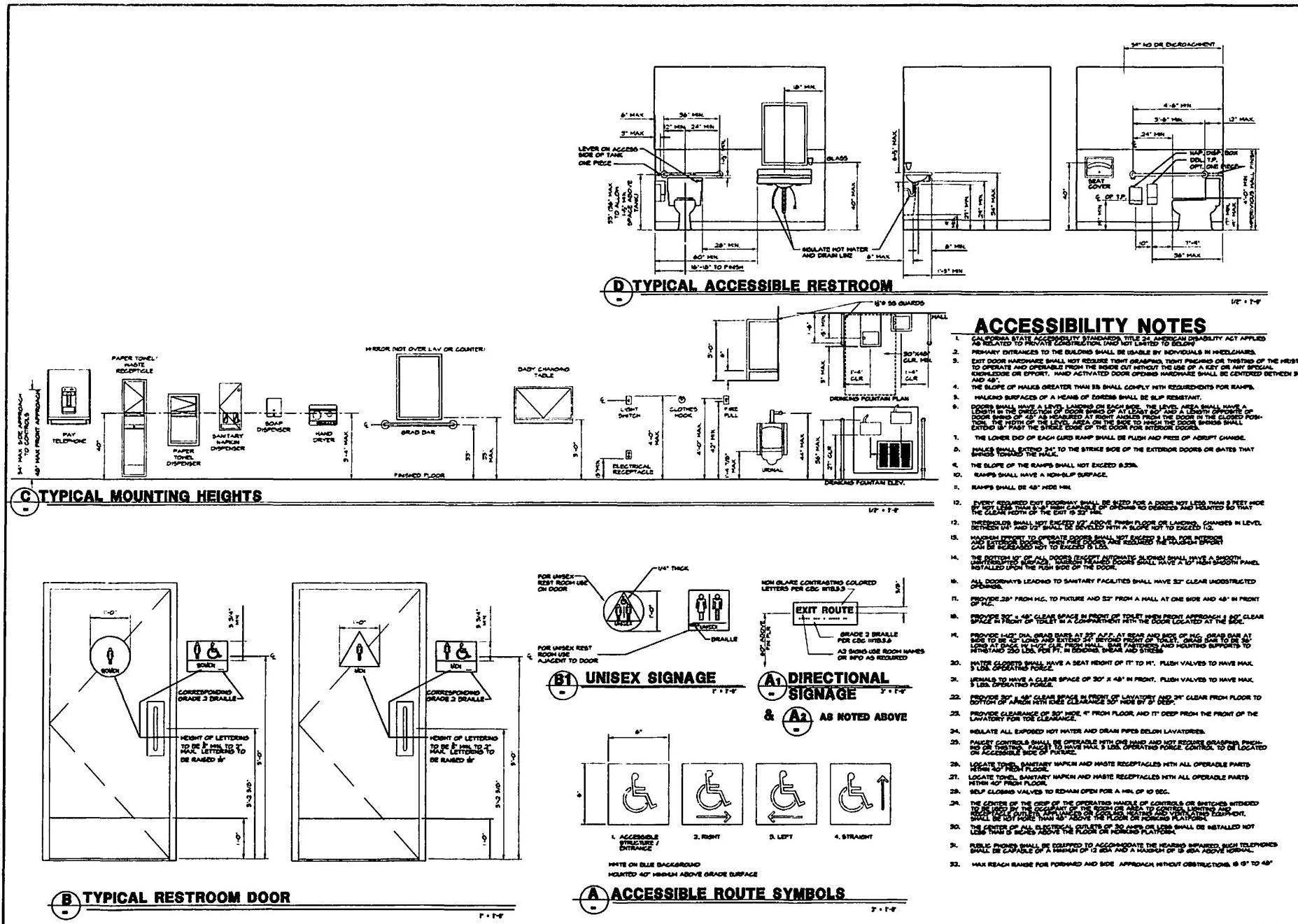
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ADR

ACCESS INFO.

Date: 9/4/04  
Scale: A.  
Drawing: 02  
Previous/Next Sheet:

A.1